Pentadbir Tanah Daerah Petaling v Glenmarie Estate Ltd

SUPREME COURT (KUALA LUMPUR) — CIVIL APPEAL NOS 01-52-89 TO 01-58-89
HASHIM YEOP A SANI CJ (MALAYA), MOHAMED YUSOFF AND AJAIB SINGH SCJJ
10 JANUARY 1992

Land Law *— Land acquisition — Determining fair market value — Normal guide — Sales of similar lands in the neighbourhood*

The appellant appealed against the decision of the learned judge of the High Court relating to his determination in increasing the market value of seven pieces of land belonging to the respondent, which was acquired by the government under the Land Acquisition Act 1960, on the ground that the learned judge had failed to consider the comparable sale of adjoining estates as indicative of the market value of the lands. In determining the market value of the scheduled lands, the learned judge solely relied on the award earlier made by the High Court of a portion of the estate at $45,000 per acre as the market value in 1979. For the purpose of assessing the value of the lands, the learned judge doubled the award to $90,000 per acre but in some cases gave due allowances for the location of the lands, its size and the time of acquisition.

Held, allowing the appeal:
While it was not wrong for the learned judge to accept the evidence of previous acquisition award of the same estate as relevant consideration indicative of the market value of the property, it would be more reliable to follow the normal and accepted guide in determining the fair market value of the lands by considering the sales of similar lands in the neighbourhood after making due allowances for all circumstances, when such evidence is available.

[Bahasa Malaysia summary

Di dalam kes ini perayu telah merayu terhadap keputusan hakim Mahkamah Tinggi yang arif mengenai penentuan beliau menaikkan nilai pasaran tujuh keping tanah kepunyaan responden, yang telah diambil oleh kerajaan di bawah Akta Pengambilan Tanah 1960, atas alasan bahawa hakim yang arif itu telah gagal menimbangkan penjualan estet bersempadan dengannya yang boleh diperbandingkan bagi mewujudkan nilai pasaran tanah-tanah itu. Di dalam menentukan nilai pasaran tanah-tanah itu, hakim yang arif telah bergantung semata-mata kepada award yang dibuat dahulu oleh Mahkamah Tinggi mengenai sebahagian estet itu dengan $45,000 seekar sebagai nilai pasaran pada tahun 1979. Untuk mentaksir nilai tanah itu, hakim yang arif telah menggandakan award itu dan memberikan $90,000

seekar tetapi di dalam beberapa kes ia telah memberi perhitungan sewajarnya kepada kedudukan tanah-tanah itu, saiznya dan masa pengambilan.

Diputuskan, membenarkan rayuan:
Sungguhpun tidak salah bagi hakim yang arif itu menerima keterangan award di dalam pengambilan estet yang sama dahulu sebagai pertimbangan yang relevan bagi menunjukkan nilai pasaran harta itu, adalah lebih boleh dipercayai jika panduan biasa dan yang telah diterima diikuti iaitu menentukan nilai pasaran yang berpatutan tanah-tanah itu dengan menimbangkan penjualan tanah seakan-akan sama di kawasan berhampiran selepas memberi perhitungan yang sewajarnya kepada semua keadaan jika keterangannya boleh diperolehi.]

Case referred to
1 *Nanyang Manufacturing Co v Collector of Land Revenue, Johore* [1954] MLJ 69 (folld)

Appeal from: Civil Application Nos A15–2–84, A3/84, A2/85, A38/85, A50/85, A61/85, and A64/86 (High Court, Kuala Lumpur)

Hishamudin bin Mohd Yunus (State Legal Adviser, Selangor) and *Hasnah Hashim* for the appellant.
Dato' Wong Soon Foh and *Tam Mei Leng* (*Chooi & Co*) for the respondent.

Cur Adv Vult

Mohamed Yusoff SCJ (delivering the judgment of the court): In this appeal the Pentadbir Tanah Daerah Petaling, Selangor Darul Ehsan (formerly known as Pemungut Hasil Tanah Petaling) appealed against the decision of the learned judge relating to his determination in increasing the market value of the seven pieces of land ('scheduled lands') belonging to the respondent, the Glenmarie Estate Ltd, in Selangor Darul Ehsan, which was acquired by the government under the Land Acquisition Act 1960 ('the Act') on the ground that the learned judge has failed to consider the comparable sale of two adjoining estates, namely, the Pilmore Estate and Seafield Estate as indicative of the market value of the scheduled lands.

The lands acquired, the purpose for which they were intended to be used, and the gazetted dates of acquisition for determining the market value of the lands by virtue of s 8 of the Act are as follows:

No	Application No	Acquisition date	Acres acquired	Purpose	Collector's award per acre	Judge's award per acre
1	A2/84	14 January 1982	0.4639 acres	switching station	$60,000	$90,000
2	A3/84	18 June 1981	60 acres	quarters for police airwing	$35,000	$57,600

3	A2/85	24 November 1983	9.014 acres	Klang Expressway	$60,000*	$117,000
4	A38/85	8 October 1981	12.118 acres	public purpose (Klang Expressway)	$45,000**	$70,000
5	A50/85	8 October 1981	55.934 acres	– do –	$38,000***	$59,500
6	A61/85	3 March 1983	0.7 acres	toll gate	$62,000	$78,750
7	A64/86	5 December 1985	11.28125 acres	Petronas gas pipeline	$65,000	$85,200

* injurious affection at $6,000 per acre only for 3 acres = $18,000 was also awarded *$ 70,200

** injurious affection awarded $48,000 ** @ $14,000 per acre $168,000

*** injurious affection awarded $125,000 *** @ $11,900 per acre for 38.4 acres = $456,900

Glenmarie Estate comprised of Lots 3588, 162, 994, and 29, had a total area of 1,239.5 acres, and the scheduled lands acquired were from various parts of these lots. Its location was approximately 10 miles from Kuala Lumpur and 2.2 miles from the Subang International Airport though bordering the road leading to it. A small portion of Lot 3588 was acquired by the government on 5 July 1979. The Pemungut Hasil Tanah's award of $30,000 per acre for the portion acquired in 1979 was increased to $45,000 per acre by the High Court and further appeal to the Supreme Court by the respondent was dismissed.

At the time of the present acquisition, Glenmarie Estate was still agricultural land planted with rubber and oil palm and there is no evidence that the landowner has made any application to convert the land to other uses or to develop it for other purposes. There was also no zoning of the area gazetted by local authorities for any particular purpose.

In his judgment the learned judge, in determining the market value of the scheduled lands, solely relied on the award made by the High Court of the portion of Lot 3588 at $45,000 per acre as market value in 1979. For the purpose of assessing the value of the present land at item 1, Application No A2/84, as at 14 June 1982, the learned judge doubled the award to $90,000 per acre for the reason that the Pemungut Hasil Tanah had in his assessment done likewise. In his written judgment he states:

> Kita perhatikan bahawa tanah ini adalah berdampingan dengan tanah yang telah diambil oleh Pemungut Hasil Tanah di dalam tahun 1979 atas lot yang sama atas pampasan sebanyak $30,000 seekar yang telah dinaikkan oleh Mahkamah Agung kepada $45,000 seekar. Kita perhatikan di sini dengan jelas bahawa pihak Pemungut Hasil Tanah telah sanggup menaikkan harga dari $30,000 seekar pada tahun 1979 kepada $60,000 seekar di dalam tahun 1982, iaitu di dalam masa 2½ tahun harga tanah Lot 3588 telah naik sebanyak 100%, bermakna di dalam masa setahun kadar kenaikan ialah 40%. Hakikatnya ialah bahawa Mahkamah Agung telah menaikkan harga tanah pengambilan tersebut dari $30,000 seekar kepada $45,000 seekar. Dengan itu bermakna harga tanah yang terbabit di sini pada bulan Januari 1982 ialah $90,000 seekar.

In determining the market value of the remaining scheduled lands in this appeal, the learned judge employed the same formula but giving allowances for the location of the lands, its size and the time frame when the acquisition took place. With that background, learned counsel for the appellant submitted that the learned judge has indulged in mathematical speculation and erred in law in not considering the comparable sales of adjoining land for the purpose of determining the market value of the scheduled lands.

In our view it is not wrong for the learned judge to accept the evidence of previous acquisition award of the same estate as relevant consideration indicative of the market value of the property. However, it is trite law that valuation is not an exact science capable of strict mathematical process and in particular when the base value of the previous compensatory award was quite remote, as has been accepted by the learned judge in the present case. It would be more reliable to follow the normal guide accepted by this court in determining the fair market value of the scheduled lands by considering the sales of similar lands in the neighbourhood after making due allowances for all circumstances, when such evidence is available. In this regard it may be useful to remind us that the accepted norm in considering 'the market value of land may be roughly described as the price that an owner willing and not obliged to sell might reasonably expect to obtain from a willing purchaser with whom he was bargaining for sale and purchase of the land'. (See *Nanyang Manufacturing Co v Collector of Land Revenue, Johore.*[1])

In evidence as shown in common plan adduced by both parties there were two sales in 1983 of lands close and adjoining the scheduled property:

(1) On 8 August 1983 the Pilmore Estate adjoining the subject property (Glenmarie Estate) to its south comprising of 400 acres was transacted at $60,000 per acre.
(2) On 29 June 1983 the Seafield Estate also closely situated to the subject property to its north comprising an area of 398 acres was sold at a price of $64,000 per acre.

The prices paid for these sales could be used as comparable and offer the best indication of market value for large estates as the subject property, after making allowances for time factor, size and other dissimilarities.

On the time factor it is common ground that the state of the property market during the period indicated a rising trend between 1980 to 1983 but turned downward in 1984 and 1985. Although these indices show increases for demand and sales recorded in residential and commercial properties in Kuala Lumpur and Petaling Jaya between the years 1980 to 1983, there is no record of similar upward demand and sale in agricultural estate lands in the area.

In reviewing these evidence and considering the value of estate land in the locality of the scheduled property between the years 1979 at $45,000 per acre (compensatory award on portion acquired of Lot 3588) and in 1983 at $64,000 per acre (the sale of Seafield Estate), it would seem that the various awards made by the Pemungut Hasil Tanah Petaling for the scheduled lands acquired between the years 1981 to 1985 at the market value ranging from $45,000 per acre (in 1981) to $65,000 per acre (in 1985) were fair and reasonable, exception having been made in respect of

market value for the case A3/84 for which an award of $35,000 per acre was made by the Pemungut Hasil Tanah for 60 acres of land acquired on 18 June 1981. As shown in evidence, an adjustment has been made for the value of this land as less attractive considering its remote location by 35% as compared to other lands sited along Jalan Lapangan Terbang and Subang New Village, its larger size and the fact that it was also located directly under the path of air flights from the airport. Similar adjustment was also made in respect of case A50/85 because of its remote location and size.

On behalf of the respondent it was argued that the award for Lot 1764, an area of 5 acres which was acquired by the government on 8 October 1981 at $145,000 per acre, should be the starting point as assessment for the value of the scheduled properties. The said land also formed part of the Glenmarie Estate but separated by the Subang Highway. It was urged that when taking the value paid for Lot 1764 as base factor the learned judge's award was considered fair and should be affirmed.

On the other hand, the appellant's record shows that the portion of the estate in Lot 1764 was earlier sold by the respondent to the registered owner's family member in 1972. It was a developed property with a permanent house on it, a store, dogs kennels, two utility blocks and a guardhouse. The whole area was enclosed by a chain link fence and used as an orchid farm. The property was acquired on 8 October 1981 for Klang Valley Expressway and a compensation of $145,000 per acre was awarded to the owner for cost of land including injurious affection to orchid plants and fruit trees.

We agree with the appellant that this Lot 1764 was an improved property at the time when it was acquired. It enjoyed a road frontage of 1/4 mile along its border with Jalan Lapangan Terbang and with those advantages it should not be considered as comparable sale for valuation of the present scheduled estate lands.

We do not propose to interfere with the Pemungut Hasil Tanah's assessment and award with respect to injurious affection pertaining to cases A2/85, A38/85 and A50/85 as these necessarily involved his assessment of primary facts which were dependent upon his observations of the witnesses whom he alone had the advantage of hearing and seeing or observing the properties himself.

With due respect we find that the learned judge has not applied the correct principle in making his award. The appeal is allowed with costs to be taxed.

Appeal allowed.

Reported by Prof Ahmad Ibrahim